

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JASON HOLLINGSWORTH,
Booking # 15746082,

Plaintiff,

vs.

CALIFORNIA DEP'T OF
CORRECTIONS; DANIEL PARAMO

Defendants.

Case No.: 3:16-cv-01426-WQH-BLM

**ORDER DISMISSING FIRST
AMENDED COMPLAINT FOR
FAILING TO STATE A CLAIM
PURSUANT TO 28 U.S.C. § 1915(e)(2)
AND § 1915A(b)**

I. Procedural History

On June 6, 2016, Plaintiff, Jason Hollingsworth, an inmate currently incarcerated at the Richard J. Donovan Correctional Facility (“RJD”) located in San Diego, California filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1) and a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2). Because Plaintiff’s Motion to Proceed IFP complied with 28 U.S.C. § 1915(a)(2), the Court granted him leave to proceed without full prepayment of the civil filing fees

1 required by 28 U.S.C. § 1914(a), but dismissed his Complaint for failing to state a claim
2 pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). (ECF No. 5.)

3 Plaintiff was granted leave to file an amended pleading in order to correct the
4 deficiencies of pleading identified in the Court's Order. (*Id.* at 8-9.) Plaintiff has now
5 filed his First Amended Complaint ("FAC"). (ECF No. 5.)

6 **II. Sua Sponte Screening Pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

7 As the Court stated in its previous Order, because Plaintiff is a prisoner and is
8 proceeding IFP, his FAC requires a pre-Answer screening pursuant to 28 U.S.C.
9 § 1915(e)(2) and § 1915A(b). Under these statutes, the Court must sua sponte dismiss a
10 prisoner's IFP complaint, or any portion of it, which is frivolous, malicious, fails to state
11 a claim, or seeks damages from defendants who are immune. *See Lopez v. Smith*, 203
12 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (discussing 28 U.S.C. § 1915(e)(2));
13 *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. §
14 1915A(b)). "The purpose of [screening] is 'to ensure that the targets of frivolous or
15 malicious suits need not bear the expense of responding.'" *Nordstrom v. Ryan*, 762 F.3d
16 903, 907 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d
17 680, 681 (7th Cir. 2012)).

18 "The standard for determining whether a plaintiff has failed to state a claim upon
19 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
20 Civil Procedure 12(b)(6) standard for failure to state a claim." *Watison v. Carter*, 668
21 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th
22 Cir. 2012) (noting that screening pursuant to § 1915A "incorporates the familiar standard
23 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
24 12(b)(6)"). Rule 12(b)(6) requires a complaint to "contain sufficient factual matter,
25 accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*,
26 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

27 Detailed factual allegations are not required, but "[t]hreadbare recitals of the
28 elements of a cause of action, supported by mere conclusory statements, do not suffice."

1 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for
 2 relief [is] . . . a context-specific task that requires the reviewing court to draw on its
 3 judicial experience and common sense.” *Id.* at 679. The “mere possibility of misconduct”
 4 or “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting
 5 this plausibility standard. *Id.* at 678-79; *see also Moss v. U.S. Secret Service*, 572 F.3d
 6 962, 969 (9th Cir. 2009).

7 **1. 42 U.S.C. § 1983**

8 Title 42 U.S.C. § 1983 provides a cause of action for the “deprivation of any rights,
 9 privileges, or immunities secured by the Constitution and laws” of the United States.
 10 *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). “To state a claim under § 1983, a plaintiff must
 11 allege two essential elements: (1) that a right secured by the Constitution or laws of the
 12 United States was violated, and (2) that the alleged violation was committed by a person
 13 acting under color of State law.” *Long v. Cty. of Los Angeles*, 442 F.3d 1178, 1185 (9th
 14 Cir. 2006) (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)).

15 **2. Davis-Bacon Act**

16 Plaintiff claims that pursuant to the “Davis Bacon Act of 1931” that inmates
 17 “building medical centers around the prison” must be paid the “prevailing wage.” (FAC
 18 at 3.) Plaintiff claims inmates are being paid “around \$0.95/an hour” while the current
 19 “prevailing wages is about \$55/an hour.” (*Id.*) As a result, Plaintiff alleges Warden
 20 Paramo and “other ‘unknown’ staff” are “illegally paying inmates” in order to receive
 21 “bonuses.” (*Id.*)

22 The Davis-Bacon Act provides, in part, that all construction contracts for certain
 23 federally funded public work projects are required to pay workers the “prevailing wage”
 24 as determined by the Secretary of Labor. 40 U.S.C. § 3142 (a)-(b). While Plaintiff does
 25 not make clear whether he was ever one of the inmates working on these projects, his
 26 claim fails as the Ninth Circuit has held that there is no “private cause of action for
 27 employees” under the Davis-Bacon Act. *Operating Engineers Health & Welfare Trust*
 28 *Fund v. JWJ Contracting Co.*, 135 F.3d 671, 676 (9th Cir. 1998).

1 Therefore, Plaintiff's claims brought pursuant to the Davis-Bacon Act must be
2 dismissed, without leave to amend, for failing to state a claim.

3 **3. Equal Protection claims**

4 The Equal Protection Clause requires that persons who are similarly situated be
5 treated alike. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985).
6 An equal protection claim may be established in two ways. First, Plaintiff may allege
7 facts to show that Defendants have intentionally discriminated against him on the basis of
8 his membership in a protected class. *See, e.g., Lee v. City of Los Angeles*, 250 F.3d 668,
9 686 (9th Cir. 2001); *Thornton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005).

10 Absent any allegation that Plaintiff is a member of a protected class or that
11 Defendants acted on the basis of his status as a member of a protected class, Plaintiff may
12 only establish an equal protection claim by showing that he was intentionally treated
13 differently than similarly situated individuals and that the Defendants' actions against
14 him lacked a rational basis or legitimate purpose. *Village of Willowbrook v. Olech*, 528
15 U.S. 562, 564 (2000); *San Antonio School Dist. v. Rodriguez*, 411 U.S. 1, 93 (1972);
16 *Squaw Valley Development Co. v. Goldberg*, 375 F.3d 936, 944 (9th Cir. 2004). To state
17 an equal protection claim under this theory, Plaintiff must allege that: (1) he was
18 intentionally treated differently from others similarly situated; and (2) there is no rational
19 basis for the difference in treatment. *Village of Willowbrook*, 528 U.S. at 564.

20 Plaintiff claims that he is a "Level 1" inmate and as such, he does not have access
21 to the same programs and privileges as a "Level 3" inmate. (FAC at 5.) "Discriminatory
22 purpose' ... implies more than intent as volition or intent as awareness of consequences. It
23 implies that the decisionmaker ... selected or reaffirmed a particular course of action at
24 least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable
25 group." *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (internal citation
26 omitted).

1 Plaintiff has not alleged any facts to suggest that Defendants intentionally treated
 2 him differently than other similarly situated inmates, i.e. Level 1 inmates, or that they
 3 lacked a rational basis for doing so. *Village of Willowbrook*, 528 U.S. at 564.

4 **4. State Law Claims**

5 To the extent Plaintiff seeks to include state law claims based on usury, the Court
 6 exercises its discretion to dismiss Plaintiff's pendent state law claims without prejudice
 7 because Plaintiff has not identified a violation of a federal law. *See* 28 U.S.C. § 1367(c)(3)
 8 ("The district court may decline to exercise supplemental jurisdiction over [state law
 9 claims] that are so related to claims in the action within such original jurisdiction that they
 10 form part of the same case or controversy . . . if the district court has dismissed all claims
 11 over which it has original jurisdiction."); *United Mine Workers of America v. Gibbs*, 383
 12 U.S. 715, 726 (1966) ("[I]f the federal claims are dismissed before trial, . . . the state claims
 13 should be dismissed as well.").

14 For these reasons, the Court finds Plaintiff's First Amended Complaint must be
 15 dismissed for failing to state a plausible claim upon which § 1983 relief can be granted.
 16 *See* 28 U.S.C. § 1915(e)(2)(B)(ii), § 1915A(b)(1); *Iqbal*, 556 U.S. at 678.

17 **5. Leave to Amend**

18 Because Plaintiff is proceeding without counsel, and he has now been provided
 19 with notice of his pleading deficiencies, the Court will grant him leave to amend as to his
 20 equal protection claims only. *See Rosati v. Igbino*, 791 F.3d 1037, 1039 (9th Cir. 2015)
 21 (quoting *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012)) ("A district court should
 22 not dismiss a pro se complaint without leave to amend [pursuant to 28 U.S.C.
 23 § 1915(e)(2)(B)(ii)] unless 'it is absolutely clear that the deficiencies of the complaint
 24 could not be cured by amendment.'").

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III. Conclusion and Order

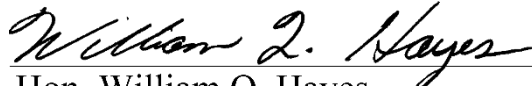
Good cause appearing, the Court:

1. **DISMISSES** Plaintiff's First Amended Complaint for failing to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and **GRANTS** him forty-five (45) days leave from the date of this Order in which to file an Amended Complaint which cures all the deficiencies of pleading noted. Plaintiff's Amended Complaint must be complete in itself without reference to his original pleading. Defendants not named and any claims not re-alleged in the Amended Complaint will be considered waived. *See* S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) ("[A]n amended pleading supersedes the original."); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an amended pleading may be "considered waived if not repled.>").

2. **DIRECTS** the Clerk of Court to mail to Plaintiff, together with this Order, a blank copy of the Court's form "Complaint under the Civil Rights Act, 42 U.S.C. § 1983" for his use in amending.

IT IS SO ORDERED.

Dated: February 2, 2017


Hon. William Q. Hayes
United States District Court